

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Case No. 09-44381

WAYNE ANTHONY PERSALL and
KIMBERLY D. PERSALL,

Chapter 13

Debtor.

Judge Thomas J. Tucker

WAYNE ANTHONY PERSALL and
KIMBERLY D. PERSALL,

Adv. Pro. No. 09-4823

Plaintiffs,

vs.

CITIBANK, INC.

ORDER DENYING MOTION FOR RECONSIDERATION

This adversary proceeding is before the Court on Plaintiff's "Motion to Set Aside Order Dismissing Adversary and Request for Reinstatement," filed on October 6, 2009 (Docket # 9, the "Motion"), which this Court construes as a motion for reconsideration of, and for relief from, the July 20, 2009 Order dismissing this case (Docket # 8), and

The Court having reviewed and considered the Motion, and

The Court finds the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

The Court also finds that the allegations in the Motion do not establish excusable neglect under Fed.R.Civ.P. 60(b)(1), FedR.Bankr.P. 9024, or any other valid ground for relief from the order dismissing this case.

In addition, the Court notes the following. When Plaintiffs filed their motion for default judgment (Docket # 5), they failed to submit a proposed order through the Court's order-submission program, as required by ECF Procedure 7(b) of the Court's Administrative Procedures for Electronic Case Filing, which procedures are available on the Court's website at <http://www.mieb.uscourts.gov/cmecfInfo/ECFAdminProc.pdf>. The Court entered an order on July 14, 2009 (Docket # 7) requiring Plaintiffs to submit such a proposed order. That order stated, in part, the following:

On July 2, 2009, plaintiff filed a Motion for Default Judgment. To date, however, a proposed default judgment has not been submitted to chambers for review. Accordingly,

IT IS ORDERED that the plaintiff must submit a proposed default judgment no later than three days after entry of this Order. If Plaintiff does not comply, the Court may dismiss this adversary proceeding, without further notice or hearing.

The Court's records show that Plaintiffs submitted a proposed order, later on July 14, 2009. Later that same day, the Court e-mailed the following message back to Plaintiffs' attorney:

Judge Tucker has reviewed the proposed order and related pleadings and has the following message for you:

Message:

This proposed default judgment does not meet the requirements of Guideline 12 to our local rules, published 6-4-09 (which is available on the Court's website). Please submit a revised order that does meet those requirements. Thanks.

No revised order was ever submitted in response to this message.¹ So the Court re-sent the message to Plaintiffs' counsel, on July 20, 2009. Despite this second message, Plaintiffs' counsel did not submit a revised proposed order. So the Court dismissed this adversary proceeding, by an order entered on July 20, 2009 (Docket # 8).

Under the facts described above, the Court concludes that the case was properly dismissed. The Court also concludes that the Motion, which was filed 11 weeks and one day after the case was dismissed, was not filed "within a reasonable time," as required by Fed.R.Civ.P. 60(c)(1).

Finally, the Court notes that the dismissal of this adversary proceeding was without prejudice, so Plaintiffs could have filed a new adversary proceeding at any time after July 20, 2009, and still can do so.

NOW, THEREFORE,

IT IS ORDERED that the Motion (Docket # 9) should be, and is, DENIED.

Signed on November 03, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

¹ The proposed default judgment submitted on July 14, 2009 did not contain the recording information regarding the mortgage (Liber and Page number, etc.), as required by Guideline 12. It also did not contain a legal description of the property at issue, as required by Guideline 12. Rather, the order merely said "See Exhibit B for legal description," and no Exhibit B was attached to the proposed order.